

S.B. Criminal Misc. Bail Application No.4254/2006

Date : 13.10.2006.

HON'BLE MR. SATYA PRAKASH PATHAK, J.

Mr. J.S. Choudhary for the applicants.

Mr. V.R. Mehta, Public Prosecutor.

I have heard learned counsel for the applicants as well as the learned Public Prosecutor for the State and carefully gone through the impugned order.

The contention of learned counsel for the applicants is that in the instant case prosecution version has not been correctly placed. It is submitted that date of incident as per prosecution version is 01.07.2006 whereas FIR was lodged on 27.7.2006. He submits that brother of the prosecutrix filed an application before the Executive Magistrate seeking search warrant and on that search warrant prosecutrix was produced before the Executive Magistrate and after her recovery she has given her statement. Submission of learned counsel is that there is no mention of the fact that the accused applicants have taken away the prosecutrix from the house or they

committed rape with her. She has specifically stated the s name of Radheyshyam. In the two statements of brothers of the prosecutrix nothing sort of that in relation to the applicants has come. Learned counsel further submits that subsequently in the statement recorded late under Section 164 Cr.P.C. the prosecutrix hurled allegation that the applicants were responsible for rape which should not be relied for the simple reason that in initial version of the prosecutrix before the Executive Magistrate makes no mention of the applicants or in any manner make them responsible for the incident, therefore, in above circumstances, the applicants should be considered for given them benefit u/s.439 Cr.P.C.

On the other hand, learned Public Prosecutor has opposed the bail application and submitted that in view of the statement of the prosecutrix recorded under Section 164 Cr.P.C. the applicants are entitled to be given benefit of bail.

I have considered the submissions made before me and carefully perused the material available on record.

After having considered entire material, I am of the opinion that in the initial version of the prosecutrix she has not stated even a word about the applicants' being responsible for taken her away from her house and further specific allegation has been attributed in the statement before the Executive Magistrate to specific person and so far as present applicants are concerned, they have been able to make out a case for grant of bail under Section 439 Cr.P.C.

Accordingly, the bail application filed under Sec. 439 Cr.P.C. is allowed and it is directed that applicants (1) Gopal S/o Nanda and (2) Uda alias Udai Lal S/o Godhu shall be released on bail in CR No.108/06 P.S. Kotadi, District Bhilwara, provided each of them executes a personal bond in the sum of Rs.30,000/- with two sound and solvent sureties in the sum of Rs.15,000/- each to the satisfaction of learned trial court for their appearance before that court on each and every date of hearing and whenever called upon to do so till the completion of the trial.

(SATYA PRAKASH PATHAK), J.

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